



Texas Board of Chiropractic Examiners

Thursday, May 18, 2023

BOARD MEETING: 9:00 A.M. – Final Adjournment at 12:12 P.M.

George H.W. Bush Building
1801 Congress Avenue, Suite 10.500
Austin, Texas 78701

BOARD MEETING MINUTES

The Texas Board of Chiropractic Examiners (Board) met on May 18, 2023, to consider and act as necessary on matters within the jurisdiction of the Board, which are listed on the agenda established for this meeting.

1. Call to Order and Roll Call:

Action Taken: Board President Dr. Mark Bronson called the meeting to order at 9:00 A.M. Board Secretary Dr. Scott Wofford called the roll.

Present Members:

Mark Bronson, D.C.
Michael Henry, D.C.
Scott Wofford, D.C.
Debra White, D.C.
Mindy Neal, D.C.
Joshua Hollub, Public Member
Brandon Allen, Public Member

Absent Members:

Nicholas Baucum, D.C.
Sarah Abraham, Ph.D., Public Member

Board Staff Present:

Patrick Fortner, Executive Director
Jennifer Hertsenberg, Director of Operations
Christopher Burnett, General Counsel
Sarah Matthews, Director of Licensing
Joseph McLaughlin, Director of Enforcement
Lisa Agarwal, Staff Services Officer
Christopher Walling, Field Investigator
Chris Beach, Field Investigator
Nikell Williams, Programmer Analyst



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Seven of the nine Board members were present and Dr. Bronson announced a quorum was established.

2. Discussion and approval of the minutes for the Board meeting held on February 23, 2023:

Action Taken: WOFFORD MOVED and WHITE SECONDED to approve the minutes from the February 23, 2023 Board meeting. The Board **APPROVED** the motion unanimously.

3. President's Report:

First, Dr. Bronson discussed recent activities of the Board:

- On February 25, 2023, Dr. Bronson attended the National Board of Chiropractic Examiners (NBCE) item writing workshop for the pilot study for the Part Four Examination advancement and development project.
- On April 26-30, 2023, Dr. Bronson attended the Federation of Chiropractic Licensing Boards (FCLB) Annual Meeting in Palm Beach, Florida as the Board's representative.
- On May 5-6, Dr. Baucum attended the NBCE Part Two Examination Development Committee meeting in Greeley, Colorado.

Next, Dr. Bronson announced future events:

- On May 20-21, 2023, the NBCE Part Four Examinations will be conducted at Parker University in Dallas, Texas. Dr. Baucum and Dr. White will serve as examiners and Dr. Bronson will serve as chief examiner.

Last, Dr. Bronson recognized Mr. Fortner for his five year anniversary with the Board and congratulated Dr. White on the completion of her term with the Board.

Dr. Wofford then congratulated Dr. Bronson on receiving the NBCE's 2023 Paul M. Tullio Award for Distinguished Service. Mr. Fortner then presented Dr. Bronson with a proclamation from the Governor's Office in recognition of the award.

4. Board Committee Reports:

a. Rules Committee

- Dr. Henry previewed the upcoming rulemaking action agenda items.

b. Enforcement Committee

- Dr. White reported on the most recent Enforcement Committee (EC) case review meeting from May 10, 2023.

c. Education Standards Committee

- Dr. Wofford reported that the committee had reviewed and fully approved 23 continuing education (CE) seminars, with another four receiving partial approval. Only one seminar was completely denied approval. He thanked Dr. Vanessa Morales of Parker University for facilitating presentations by Board members for students at the chiropractic school.

d. Licensing Committee

- Dr. Abraham was absent and no report was made.

5. Executive Director and Staff Reports:

a. Executive Director

- First, Mr. Fortner updated the Board members and staff on the implementation of the Legislature's upcoming employee pay increase appropriations. He stated that the Board's budget for the upcoming fiscal year would be about \$1.1 million.
- He then discussed his proposed timeline for adding staff in the coming months with the additional salary appropriated by the Legislature. He also discussed some of the considerations staff was looking into for the new chiropractic director position's job posting. Dr. Bronson asked a question about the work requirements for the proposed new chiropractic director position. Ms. Agarwal answered that all employees must be half-time or full-time employees. Mr. Fortner added that if an increased workload was needed, it could be addressed in the future.
- Last, he addressed the reappointment of Dr. Neal and Mr. Hollub to the Board as well as the pending appointment of a new member to replace Dr. White.

b. Director of Operations

- Ms. Hertsenberg discussed the financial report through the end of April for Fiscal Year 2023. She noted that the agency is on target with its revenues and expenditures and she did not anticipate any potential issues.

c. Director of Licensing

- Ms. Matthews presented the licensing report for the second quarter of Fiscal Year 2023. Dr. Henry asked whether the rate of new licenses being granted was normal and Ms. Matthews answered that it was.

d. Director of Enforcement

- Mr. McLaughlin reported that 44 cases had been closed in the last reporting period with an average time required to close of 323 days.
- Mr. Fortner discussed his recent report to the Legislative Budget Board and noted a downward trend in complaints received.
- Attorney Michele Quattlebaum of Sprott Newsom Quattlebaum & Messenger noted that she believed increased outreach by Board staff to the licensee community regarding risk management and compliance was helpful in decreasing complaints.

6. Public Comments:

There were none for this meeting.

7. Discussion and action on requests to sit for the Texas Jurisprudence Examination pursuant to Texas Occupations Code §201.304(a)(2):

a. David Goodwin, Jr.

Ms. Matthews presented the applicant's licensing history to the Board. The staff recommendation was to allow the applicant to take the Texas Jurisprudence Examination after successful completion of the Special Purposes Examination for Chiropractors (SPEC) at his own expense.

Ms. Quattlebaum addressed the personal circumstances that led to the gap in the applicant's licensure. Dr. Henry, Dr. Bronson, and Dr. White asked questions regarding the applicant's current clinical skills and future practice plans, which he answered.

Action Taken: HENRY MOVED and WOFFORD SECONDED to allow the applicant to take the Jurisprudence Examination without requiring the SPEC examination. The Board **APPROVED** the motion unanimously.

b. Aaron Shoemaker

Ms. Matthews presented the applicant's criminal and license disciplinary history to the Board. The staff recommendation was to deny the applicant's request and allow him to re-apply in one year.

Ms. Quattlebaum discussed parts of the applicant's file and noted his character references. She discussed his licensing history in Alaska and his current employment in the oil industry. She also highlighted an evaluation clearing him to practice, his passing of the Ethics and Boundaries Assessment Services (EBAS) examination, and that he has been consistently passing all controlled substance screenings. She also addressed his future business plans.

Dr. Henry and Ms. Quattlebaum discussed potential probationary license options. The applicant also added comments on his past and how he planned to move forward.

Action Taken: HENRY MOVED and WOFFORD SECONDED to allow the applicant to take the Jurisprudence Examination and upon passing, that he be issued a probationary license for one year from the date of licensure. The Board **APPROVED** the motion unanimously.

8. Discussion and action on proposed final decision (PFD) orders pursuant to Texas Occupations Code §201.555 and 22 TAC §81.10:

a. Carol Jane Oakley, License No. 5847, TBCE Case No. 2017-268

Mr. Burnett presented the proposed final decision order. The staff recommendation was that the Board approve the order.

Action Taken: WOFFORD MOVED and HOLLUB SECONDED to approve the PFD order. The Board **APPROVED** the motion unanimously.

9. Discussion and action on proposed cease and desist orders pursuant to Texas Occupations Code §201.6015 and Texas Government Code §2001.056:

There were none for this meeting.

10. Discussion and action on default orders pursuant to Texas Occupations Code §201.555, Texas Government Code §§2001.056(4) and 2001.058(d-1), and 22 TAC §81.6(b):

There were none for this meeting.

11. Discussion and action on proposed agreed orders pursuant to Texas Occupations Code §201.504(a)(1):

a. Katerina Sheffield Dickey, License No. 11499, TBCE Case No. 2022-114

Mr. McLaughlin presented the proposed agreed order. The staff recommendation was that the Board approve the agreed order.

Action Taken: WOFFORD **MOVED** and NEAL **SECONDED** to approve the agreed order. NOTE: Dr. Henry recused himself. The Board **APPROVED** the motion unanimously.

b. Gene Allen Lott, License No. 6827, TBCE Case No. 2022-121

Mr. McLaughlin presented the proposed agreed order. The staff recommendation was that the Board approve the agreed order.

Action Taken: ALLEN **MOVED** and HENRY **SECONDED** to approve the agreed order. The Board **APPROVED** the motion unanimously.

c. Jason L. Morgan, License No. 10376, TBCE Case Nos. 2023-006 and 025

Mr. McLaughlin presented the proposed agreed order. The staff recommendation was that the Board approve the agreed order.

Action Taken: HENRY **MOVED** and WOFFORD **SECONDED** to approve the agreed order. The Board **APPROVED** the motion unanimously.

12. Discussion and action on required suspension or revocation of licenses for certain offenses pursuant to Texas Occupations Code §201.5065:

a. Robert Thurston Aldridge, License No. 6628, TBCE Case No. 2023-056

Mr. McLaughlin presented the proposed statutory revocation order. The staff recommendation was that the Board approve the revocation of the license.

Action Taken: HENRY **MOVED** and HOLLUB **SECONDED** to approve the revocation of the license. The Board **APPROVED** the motion unanimously.

b. Alejandro Xavier Rivera, License No. 8976, TBCE Case No. 2023-073

Mr. McLaughlin presented the proposed statutory revocation order. The staff recommendation was that the Board approve the revocation of the license. Respondent's attorney was present and argued a legal case against the revocation that the Board has discretion in assessing a punishment under Texas Occupations Code §201.5065. Board's staff disagreed and argued that the revocation was a ministerial act required by statute and that the Board had no discretion.

Action Taken: HENRY MOVED and WOFFORD SECONDED to approve the revocation of the license. The Board **APPROVED** the motion unanimously.

Action Taken: At 11:05 A.M., Dr. Bronson allowed for a short break.

Action Taken: At 11:21 A.M., Dr. Bronson reconvened the meeting.

13. Board Policy Discussions:

There were none for this meeting.

14. Discussion and action on proposing the amendment of 22 TAC §78.4 (Delegation to Chiropractic Students and Recent Graduates):

As a preliminary matter, Mr. Burnett advised the Board that any rules voted for proposal at the day's meeting should be contingent on any feedback from the Office of the Governor's rule review.

Mr. Burnett introduced the item by explaining that the proposed change would increase the amount of time licensees could delegate the performance of adjustments and manipulations to recent graduates from one year to two. This proposal was submitted by a member of the licensee community as a response to the increased difficulty chiropractic graduates have been having in passing the national board examinations due to pandemic era learning difficulties. The staff recommendation was for the Board to propose the amendment as discussed.

Ms. Quattlebaum pointed out that delegations of adjustments and manipulations to recent graduates under 22 TAC §78.4 are not reimbursable by insurance. She felt that, from a risk management perspective, increasing the delegation period could make it more likely that a claim is incorrectly filed with insurance. Dr. Wofford asked a question regarding the clinical programs at the chiropractic schools, which Dr. Morales addressed by explaining the supervision of the students by clinic staff.

Dr. Morales also extensively discussed efforts by Parker University to increase the ability of its students to quickly pass all board exams and get licensed.

Mr. Burnett advised the Board members to withdraw the rule proposal so a new proposal could be made at the next meeting to split the current 22 TAC §78.4 into two rules. One would address current students while the other would address recent graduates.

Action Taken: WOFFORD MOVED and ALLEN SECONDED to withdraw the rule proposal. The Board **APPROVED** the motion unanimously.

15. Discussion and action on proposing the repeal and replacement of 22 TAC §80.5 (Expert Review Process):

Mr. Burnett introduced the item by explaining that this proposal is intended to clarify that standard of care reviews do not assign causation of injury and liability but only analyze standard of care questions. The staff recommendation was for the Board to propose the repeal and replacement as discussed, subject to any Governor's Office review.

Action Taken: ALLEN MOVED and HENRY SECONDED to propose the repeal and replacement of 22 Texas Administrative Code §80.5 as discussed, subject to any Governor's Office review. The Board **APPROVED** the motion unanimously.

16. Discussion and action on proposing a new Board rule, 22 TAC §80.8 (Board Member and Staff Initiated Complaints):

Mr. Burnett explained this item was an attempt to codify the Board's current policy on Board member initiated complaints. He noted that Mr. Fortner and the complaining Board or staff member would be listed as the complainants, and the complaining member would recuse themselves from voting on any disciplinary action. The staff recommendation was for the Board to propose the new rule as discussed, subject to any Governor's Office review.

Action Taken: HENRY MOVED and WHITE SECONDED to propose the new rule 22 Texas Administrative Code §80.8 as discussed, subject to any Governor's Office review. The Board **APPROVED** the motion unanimously.

17. Discussion and action on proposing a new Board rule, 22 TAC §82.7 (Employee Equity Salary Adjustments):

Mr. Burnett explained that this proposal is in response to a provision in the appropriations act requiring that for an agency director to adjust an employee's salary for equitable purposes, the agency must have a rule in place creating such a procedure. The staff recommendation was for the Board to propose the new rule as discussed, subject to any Governor's Office review.

Action Taken: HENRY MOVED and WHITE SECONDED to propose the new rule 22 Texas Administrative Code §82.7 as discussed, subject to any Governor's Office review. The Board **APPROVED** the motion unanimously.

18. Discussion and action on adopting the amendment of 22 TAC §73.2 (Failure to Meet Continuing Education Requirements):

Ms. Hertsenberg introduced this item by explaining that this action was needed to reflect in rule that the Board does not conduct continuing education audits of every licensee. Mr. Burnett

discussed a comment received from the Texas Medical Association. The staff recommendation was for the Board to adopt the amendment as proposed in the Texas Register.

Action Taken: HOLLUB **MOVED** and HENRY **SECONDED** to adopt the amendment of 22 Texas Administrative Code §73.2 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

19. Closed Session:

There was no closed session for this meeting.

20. Requests from Board members for future agenda items:

There were none for this meeting.

Mr. Fortner announced that Mr. McLaughlin would be on leave the next two weeks and Mr. Walling would assume his complaint intake duties.

Dr. Bronson yielded the floor to Dr. White and she thanked all Board members and staff for the opportunity to serve.

21. Adjournment:

Action Taken: WHITE **MOVED** and NEAL **SECONDED** to adjourn the meeting at 12:12 P.M. The Board **APPROVED** the motion unanimously.

STATEMENT: I affirm that the above is a true and correct rendering of the minutes for the Texas Board of Chiropractic Examiners Board Meeting held on the above date. The minutes from the Board Meeting held on February 23, 2023, were **APPROVED** by the Texas Board of Chiropractic Examiners at its regularly scheduled meeting held on May 18, 2023.



May 19, 2023

Patrick Fortner
Executive Director
Texas Board of Chiropractic Examiners

Date